

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HOPE LYNN MILLER,

Plaintiff,

-vs-

ANDREW M. SAUL,¹
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Civil Action No. 3:18-249

AMBROSE, Senior District Judge

MEMORANDUM OPINION

Pending before the court are Cross-Motions for Summary Judgment. [ECF Nos. 11 and 13] Both parties have filed Briefs in Support of their Motions. [ECF Nos. 12 and 14]. After careful consideration of the submissions of the parties, and based on my Opinion set forth below, I am granting Plaintiff's Motion for Summary Judgment [ECF No. 11] denying Defendant's Motion for Summary Judgment. [ECF No. 13].

Plaintiff brought this action for review of the final decision of the Commissioner of Social Security denying her applications for disability insurance benefits and supplemental security income pursuant to the Social Security Act. Administrative Law Judge ("ALJ"), Leeanne Foster, held a hearing on February 28, 2017. [ECF No. 8-3]. On April 12, 2017, the ALJ found that Plaintiff was not disabled under the Act. [ECF No. 8-2, at 31-45].

After exhausting all administrative remedies, Plaintiff filed the instant action with this court. The parties have filed Cross-Motions for Summary Judgment. [ECF Nos. 11 and 13]. The issues are now ripe for review.

¹ Andrew M. Saul was sworn in as Commissioner of Social Security on June 18, 2019, replacing Acting Commissioner, Nancy A. Berryhill.

In her Motion for Summary Judgment, Plaintiff argues that the ALJ was an unconstitutionally appointed officer, pursuant to Lucia v. S.E.C., 138 S. Ct. 2044 (2018).² This issue was stayed pending the Court of Appeals' decision in several cases, including Cirko v. Berryhill, 948 F. 3d 148 (3d Cir. 2020), and the case was administratively closed until such time. [ECF No. 16]. The stay was continued pending the exhaustion of pertinent appellate proceedings. Presently, Defendant has filed a Status Report, stating that it will not seek Supreme Court review of Cirko, and disavowing an argument that Cirko is inapplicable here. [ECF No. 18, ¶3]. As a result, I have reopened the case and will lift the stay and grant Plaintiff's Motion for Summary Judgment. [ECF No. 11].

In Lucia, the Supreme Court held that ALJs of the Securities and Exchange Commission must be appointed by the President, a court of law, or the Department head. Lucia, 138 S. Ct. at 2053. In Cirko, our Court of Appeals determined that a Social Security claimant is not required to exhaust her administrative remedies before raising an appointments clause issue with the District Court. Cirko, 948 F. 3d at 152, 155. Pursuant to Lucia and Cirko, the Court concludes that Plaintiff is entitled to have all claims adjudicated by a constitutionally appointed ALJ other than the ALJ who presided over the prior hearing. See id. at 159-60; Bauer v. Saul, No. 19-2563, 2020 WL 1955595, at *2 (E.D. Pa. Apr. 23, 2020). Consequently, remand is warranted.

An appropriate order shall follow.

² Following Lucia, on July 16, 2018, the Acting Commissioner of Social Security appointed Defendant's ALJs in accordance with the Appointments Clause, United States Constitution Art. II, § 2, cl. 2. This action had no retroactive effect. Flynn v. Saul, No. 19-0058, 2020 WL 509164, at *2 (E.D. Pa. Jan. 30, 2020).

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Civil Action No. 3:18-249

AMBROSE, Senior District Judge

ORDER OF COURT

THEREFORE, this 3rd day of June, 2020, it is ordered that the stay is lifted and that Plaintiff's Motion for Summary Judgment [ECF No. 11] is granted and Defendant's Motion for Summary Judgment [ECF No. 13] is denied.

It is further ordered that the decision of the Commissioner of Social Security is hereby vacated and the case is remanded for further administrative proceedings consistent with the foregoing opinion.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge